IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 28310 of 2005(T)

AGAINST THE ORDER IN EP 75 2003 IN OS.340/2001 of PRL.SUB COURT,IRINJALAKUDA

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PETITIONER:

HEMA, KURUPPATHUKATTIL HOUSE,
KOTTANALLOOR VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS:

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1. **SARADA SAMAJAM, KOTTIKAL DESOM,**
   AZHIKODEU VILLAGE, KODUNGALLOOR TALUK,
   THRISSUR DISTRICT, REPRESENTED BY ITS PRESIDENT
   MR. RAMAKRISHNAN.

2. **SARADA SAMAJAM, KOTTIKAL DESOM,**
   AZHIKODU VILLAGE, KODUNGALLOOR TALUK,
   THRISSUR DISTRICT, REPRESENTED BY ITS
   SECRETARY MR. SUBRAMANIAN.

BY ADV. SRI.K.P.DANDAPANI for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.28310/2005 T

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.NO.340/2001.**

EXT.P2: **COPY OF THE SALE PROCLAMATION IN E.P.NO.75/2003 IN O.S.NO.340/2001.**

EXT.P3: **COPY OF THE E.A.NO.839/2004.**

EXT.P4: **COPY OF THE ORDER IN E.A.NO.1610/2004 IN E.P.75/2003 IN O.S.NO.340/2001 DTD. 11/03/2005.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 28310 of 2005

Dated this the 10th day of July , 2007

JUDGMENT

In this writ petition under Article 227 of the Constitution the judgment debtor, whose property was sold by the Execution Court for recovery of the decree debt due to the respondents, impugns Ext.P4 order passed by the court dismissing E.A.1610/2004 to set aside the sale. Ext.P4 is not an order on merits. It is an order passed when the petitioner was absent and did not adduce any evidence though the posting was peremptorily for adducing evidence. Noticing the various grounds raised in the writ petition, which inter alia included a grounds that the petitioner is ready and willing to pay off the decree debt and that proper credit has not been given to all the payments made by the judgment debtor/petitioner, this court granted stay imposing a condition that a sum of Rs.65,000/- shall be paid within one month from 5.10.2005. Thereafter on

16.1.2006, this court continued the order of stay imposing a further condition that a sum of Rs.25,000/- shall be paid within one month from 16.1.2006. The counsel on either sides are unable to inform me whether the above two conditions have been complied with by the petitioner.

2. Having regard to the grounds raised and the submissions addressed before me by the learned counsel, I am of the view that this writ petition itself can be disposed of granting limited reliefs to the petitioner subject to the following conditions:

i). The petitioner is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) towards the decree debt to the respondents either directly or through their counsel in the court below within three weeks from today.

ii). The court below is directed to verify whether the petitioner has paid or deposit a sum of Rs.65,000/- within one month from 5.10.2005 and further sum of Rs.25,000/- within one month from 16.1.2006. Once the court below finds on verification that the two payments ordered by this court (Rs.65,000/- & Rs.25,000/-) have already been paid by the petitioner within the time frame fixed by this court and that the

petitioner has also paid a sum of Rs.10,000/- as ordered in the present judgment within the stipulated time, the court below will restore E.A.NO.1610/2004 back to file. If E.A. No.1610/2004 is so restored, the learned Judge will take a decision on that E.A. on its merits taking due notice of circumstances that during the pendency of this writ petition, the petitioner has made payments towards the decree debt. Considering the circumstance that the E.P. is of 2003 and that the sale itself was conducted long ago (23.6.2005), the learned Subordinate Judge will take a final decision on the E.A. at the earliest and at any rate within four months of receiving a copy of this judgment. It is made clear that if the petitioner has not made the three payments as indicated above, he will not get the benefit of this judgment and under such an event, Ext.P4 will stand confirmed.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

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